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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-398

THE CITIZENS AND SOUTHERN NATIONAL BANK,
Petitioner,

vs.

NICK BOUGAS,
Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF GEORGIA

PETITION FOR CERTIORARI FILED SEPTEMBER 15, 1976

CERTIORARI GRANTED JANUARY 25, 1977



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APPENDIX

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DOCKET ENTRIES

State Court of Dekalb County
State of Georgia

Nick Bougas	}	Civil Action File No. C-77256
vs.		
Citizens and Southern National Bank		

Date	Filings—Proceedings
1975	
June 30	Complaint of Plaintiff Nick Bougas (hereinafter "Bougas") against Defendant Citizens and Southern National Bank (hereinafter "C&S") filed.
July 29	C&S Answer filed.
July 29	C&S Motion to Dismiss, Brief, Affidavit of William C. Humphreys, Jr. in Support of Motion, and Notice of Motion filed.
Aug. 22	C&S Motion to Dismiss Argued.
Aug. 22	Order entered Denying C&S Motion to Dismiss.
Sept. 2	C&S Certificate for Immediate Review filed.
Sept. 25	Notation of Georgia Court of Appeals Order Granting C&S Application for Interlocutory Appeal.
Oct. 1	C&S Notice of Appeal filed.

DOCKET ENTRIES

Court of Appeals of the
State of Georgia

The Citizens and Southern National Bank	}	51622
vs.		
Nick Bougas		

Date Filings—Proceedings

1975

Sept. 11 C&S Petition for Immediate Review filed.¹
 Sept. 24 Order entered granting C&S Application for Inter-
 locutory Appeal.²
 Oct. 17 Record of the State Court of DeKalb County filed.
 Nov. 5 C&S Enumeration of Errors filed.
 Nov. 5 C&S Brief of Appellant filed.
 Nov. 10 C&S Appeal calendared for oral argument on Janu-
 ary 6, 1976.
 Nov. 25 Bougas Brief of Appellee filed.
 Dec. 3 C&S Brief of Appellant in Reply to Brief of Ap-
 pellee filed.

¹ The C&S Petition for Immediate Review, a procedural prerequi-
 site to interlocutory appeal, and all Orders dispositive thereof, being
 anterior to actual appeal, are docketed in a separate index which does
 not comprise the Court of Appeals General Docket entries in Case
 No. 51622.

² See n.1, *supra*.

1976

Jan. 6 Oral Argument on appeal.
 Jan. 12 Bougas Supplemental Brief of Appellee filed.
 May 6 Judgment and Opinion entered affirming Order of
 the State Court of DeKalb County.
 May 14 C&S Motion for Rehearing and Brief in Support of
 Motion filed.
 May 21 Order entered denying C&S Motion for Rehearing.
 May 27 C&S Notice of Intention to Apply to the Georgia
 Supreme Court for a Writ of Certiorari filed.

DOCKET ENTRIES

Supreme Court of the
State of Georgia

Citizens and Southern National Bank	}	31402
vs.		
Nick Bougas		

Date Filings—Proceedings

1976

June 18 C&S Petition for Certiorari filed.
 June 30 Order entered denying Writ of Certiorari.
 July 9 C&S Motion for Reconsideration and Brief in Sup-
 port of Motion filed.
 July 15 Order entered denying C&S Motion for Reconsidera-
 tion.

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

(Title Omitted in Printing)

COMPLAINT

(Filed June 30, 1975)

Nick Bougas, plaintiff, states his complaint, as follows:

1

The defendant Citizens and Southern National Bank is a corporation doing business at I West Court Square, Decatur, DeKalb County, Georgia, and is subject to the jurisdiction of this Court.

2

Defendant is indebted to the plaintiff in the sum of \$26,040.00 plus interest from the date of conversion, February 25, 1975, actual damages and \$100,000.00 punitive damages as shall hereinafter be shown.

3

Plaintiff is the owner of one Bond No. V1208607, which he entrusted to the defendant in November, 1972, at which time he assigned said savings certificate as collateral on a note signed by his son, Arthur Nick Bougas, and on which he, your plaintiff, signed as a surety.

4

On or about February 25, 1975, defendant unlawfully redeemed and converted to its own use the following described

personal property of the plaintiff: A Citizens and Southern Savings Certificate No. V-1208607 in the name of Mr. Nick Bougas with a fact value of \$25,000.00 and a value on February 25, 1975, of \$26,040.00.

5

That defendant did redeem plaintiff's bond on the basis of an alleged default of plaintiff's son, Arthur Nick Bougas, on a note in which said Arthur Nick Bogus had signed as surety for one Marvin Welsh. Plaintiff's son was not in default on said note signed by Marvin Welsh or the note signed by the son himself for which your plaintiff had signed as a surety.

6

Plaintiff's son, Arthur Nick Bougas, had been discharged as a surety on the note signed by Marvin Welsh by the defendant's varying the terms of the contract with the said Marvin Welsh without said Arthur Nick Bougas' consent by the defendant's altering the payment schedule and rate of interest.

7

The note signed by Arthur Nick Bougas on which your plaintiff signed as surety was not in arrears.

8

When the defendant wrongfully redeemed the bond of your plaintiff, he deducted from the proceeds the amount outstanding on the loan signed by Arthur Nick Bogus as principal, the balance of the loan signed by Arthur Nick Bougas as surety, and attorney's fees.

Plaintiff has been without the use of the funds evidenced by the bond since February, 1975, and has been denied interest on said funds.

The actions of the said defendant were deliberate and wilful, and done to defraud plaintiff of his bond and the use thereof; and the plaintiff asks the Court to award him punitive damages in the amount of \$100,000.00.

Wherefore, plaintiff prays:

- (a) That process issue;
- (b) That the plaintiff be awarded actual damages in the amount of \$26,040.00 plus interest from February 25, 1975, and punitive damages in the amount of \$100,000.00.
- (c) That he be awarded any other relief that the Court deems fit and proper under the circumstances;
- (d) That he be awarded attorney's fees in the amount of \$10,000.00 for having to bring this suit against the defendant.

HENDON, EGERTON, HARRISON,
GLEAN & KOVACICH
/s/ E. T. HENDON, JR.
/s/ MICHAEL J. KOVACICH
Attorneys for Plaintiff

101 Trust Building
Decatur, Georgia 30030
378-3627

(Complaint Backing Summons and Return of Service
Omitted in Printing)

IN THE STATE COURT OF DeKALB COUNTY
STATE OF GEORGIA

(Title Omitted in Printing)

ANSWER

(Filed July 29, 1945)

Now Comes the Defendant, the Citizens and Southern National Bank and answers the Complaint as follows:

First Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Defense

1. Defendant admits that it is a corporation and conducts business at 1 West Court Square, Decatur, DeKalb County, Georgia among other places, but denies that it is located there and denies that it is subject to the jurisdiction of this Court.

2. Defendant denies the allegations of paragraph 2 of the Complaint.

3. Answering paragraph 3 of the Complaint the Defendant admits that the Plaintiff granted a security interest in and assigned The Citizens and Southern Savings Bond No. V1208607 to The Citizens and Southern National Bank November 28, 1972 to secure the payments of all obligations of Arthur Nick Bougas, his son, to The Citizens and Southern National Bank, however incurred or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. Defendant is without knowledge or information

sufficient to form a belief as to the truth of any other allegations of paragraph 3 of the Complaint.

4. Defendant denies the allegations of paragraph 4 of the Complaint.

5. Answering paragraph 5 of the Complaint the Defendant admits that it did redeem Plaintiff's bond to satisfy the guaranty indebtedness of the Plaintiff, which indebtedness had matured upon the debt of Arthur Nick Bougas having been declared in default. The indebtedness of Arthur Nick Bougas to The Citizens and Southern National Bank was declared in default February 5, 1975 if not actually done sooner. The remaining allegations of paragraph 5 of the Complaint are denied.

6. Defendant denies the allegations of paragraphs 6, 7, 8, 9, and 10 of the Complaint.

Wherefore, having fully answered the Defendant, The Citizens and Southern National Bank prays that it be discharged without costs.

/s/ WILLIAM HUMPHREYS

ALSTON, MILLER & GAINES

Twelfth Floor, Citizens & Southern
National Bank Building
Atlanta, Georgia 30303

/s/ RICHARD A. ROMINGER

ADAMS, ADAMS, BRENNAN & GARDNER

Post Office Box 1208
Savannah, Georgia 31402

Attorneys for Defendant, The Citizens
and Southern National Bank

(Certificate of Service Omitted in Printing)

IN THE STATE COURT OF DeKALB COUNTY
STATE OF GEORGIA

(Title Omitted in Printing)

**MOTION TO DISMISS AND BRIEF IN
SUPPORT OF MOTION**

(Filed July 29, 1975)

Defendant, The Citizens and Southern National Bank, pursuant to the provisions of Georgia Code Ann. § 81A-112(b) moves the Court for an Order dismissing the Complaint against it on the grounds of improper venue and lack of jurisdiction over Defendant.

Defendant is a national banking association chartered in Savannah, Chatham County, Georgia, as shown by the Affidavit and exhibit attached hereto and incorporated by reference herein.

Under the provisions of 12 U.S.C.A. § 94 as applied by the Georgia Court of Appeals in *Carswell v. Cannon*, 110 Ga. App. 315 (1964), a national bank can only be sued in the county in which its charter was issued.

Since Defendant The Citizens and Southern National Bank was chartered in Savannah, Chatham County, Georgia, suit can be maintained against it only in Chatham County, Georgia.

For the foregoing reasons, Defendant prays that this Court issue an Order dismissing the Complaint against it.

This 28 day of July, 1975.

/s/ WILLIAM C. HUMPHREYS, JR.

/s/ RICHARD A. ROMINGER

Counsel for Defendant The Citizens
and Southern National Bank

Of Counsel:

ALSTON, MILLER & GAINES

1200 Citizens and Southern

National Bank Building

Atlanta, Georgia 30303

(404) 588-0300

ADAMS, ADAMS, BRENNAN & GARDNER

15 Drayton Street

Savannah, Georgia 31402

(Certificate of Service Omitted in Printing)

IN THE STATE COURT OF DeKALB COUNTY
STATE OF GEORGIA

(Title Omitted in Printing)

Affidavit of William C. Humphreys, Jr.

(Filed July 29, 1975)

State of Georgia
County of Fulton

I, William C. Humphreys, Jr., on oath depose and say the following:

1

I am an attorney with the law firm of Alston, Miller & Gaines and the law firm is general counsel to The Citizens and Southern National Bank.

2

Attached hereto as Exhibit A is a true and correct copy of the Certificate of the Deputy Comptroller of the Currency showing

the Charter of The Citizens and Southern National Bank to have been issued in Savannah, Chatham County, Georgia.

This 25 day of July, 1975.

/s/ WILLIAM C. HUMPHREYS, JR.

Sworn to and subscribed before me this 25th day of July, 1975.

Linda Cowan
Notary Public

Exhibit A—Page 1

Certificate

Treasury Department
Office of
Comptroller of the Currency } ss

I, Thomas G. DeShazo, Deputy Comptroller of the Currency, do hereby certify that:

1. Pursuant to Revised Statutes 324, et seq., as amended, 12 U.S.C. 1, et seq., the Comptroller of the Currency char-
ters and exercises regulatory and supervisory authority over
all national banking associations;
2. On May 2, 1927, The Citizens and Southern Bank of
Savannah, Savannah, Georgia, was chartered as a National
Banking Association under the laws of the United States
and under the title of "The Citizens and Southern National
Bank";
3. The document hereto attached is a true and complete
copy of the Charter Certificate issued to The Citizens and

Southern National Bank, Savannah, Georgia, the original of which certificate was issued by this Office on May 2, 1927;

4. Effective January 29, 1968, the title of the subject bank was changed to "The Citizens and Southern National Bank of Georgia", and effective January 31, 1969, the title was again changed to "The Citizens and Southern National Bank"; and

The Citizens and Southern National Bank, Savannah, Georgia, continues to hold a valid certificate to do business as a National Banking Association.

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of Office of the Comptroller of the Currency to be affixed to these presents at the Treasury Department, in the City of Washington and District of Columbia, this 7th day of May, A. D. 1970.

/s/ Thomas G. DeShazo
Deputy Comptroller of the Currency

(Seal)

Exhibit A—Page 2

No. 13068

TREASURY DEPARTMENT

Office of Comptroller of the Currency

Washington, D.C., May 2, 1972

Whereas, by satisfactory evidence presented to the undersigned, it has been made to appear that The Citizens and

Southern National Bank in the City of Savannah in the County of Chatham and State of Georgia has complied with all the provisions of the Statutes of the United States, required to be complied with before an association shall be authorized to commence the business of Banking;

Now, therefore, I, J. W. McIntosh, Comptroller of the Currency, do hereby certify that "The Citizens and Southern National Bank", in the City of Savannah, in the County of Chatham and State of Georgia is authorized to commence the business of Banking as provided in Section Fifty-one hundred and sixty-nine of the Revised Statutes of the United States. Conversion of the Citizens and Southern Bank of Savannah with a main office in Savannah, one branch in Savannah and 8 branches outside Savannah within the limits of the state of Georgia.

In testimony whereof, witness my hand and seal of office this Second day of May, 1972.

J. W. McINTOSH
Comptroller of the Currency

(Certificate of Service Omitted in Printing)

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

(Title Omitted in Printing)

NOTICE OF MOTION

(Filed July 29, 1975)

To: Nick Bougas
E. T. Hendon, Jr., Counsel for Plaintiff
Hendon, Egerton, Harrison, Glean & Kovacich
101 Trust Building
Decatur, Georgia 30030

Please take notice that Defendant will bring the within and foregoing Motion to Dismiss on for hearing before the Presiding Judge, State Court of DeKalb County, on the 22 day of August, 1975, at 9:30 o'clock A.M., then and there to be heard.

/s/ WILLIAM C. HUMPHREYS, JR.

Of Counsel

ALSTON, MILLER & GAINES
1200 Citizens and Southern
National Bank Building
Atlanta, Georgia 30303
(404) 588-0300

/s/ RICHARD A. ROMINGER

ADAMS, ADAMS, BRENNAN &
GARDNER

15 Drayton Street
Savannah, Georgia 31402
(912) 233-8081

Counsel for Defendant The Citizens
and Southern National Bank

(Certificate of Service Omitted in Printing)

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

(Title Omitted in Printing)

ORDER (Entered August 22, 1975)³

[Printed in its entirety on page A-5 of the
Petition for Writ of Certiorari]

COURT OF APPEALS OF THE
STATE OF GEORGIA

(Title Omitted in Printing)

OPINION (Entered May 6, 1976)

[Printed in its entirety on pages A-1 through A-4
of the Petition for Writ of Certiorari]

COURT OF APPEALS OF THE
STATE OF GEORGIA

(Title Omitted in Printing)

JUDGMENT (Entered May 6, 1976)

[Printed in its entirety on page A-6 of the
Petition for Writ of Certiorari]

³ Denying Motion to Dismiss.

COURT OF APPEALS OF THE
STATE OF GEORGIA

(Title Omitted in Printing)

ORDER (Entered May 21, 1976)⁴

[Printed in its entirety on page A-7 of the
Petition for Writ of Certiorari]

SUPREME COURT OF THE
STATE OF GEORGIA

(Title Omitted in Printing)

ORDER (Entered June 30, 1976)⁵

[Printed in its entirety on page A-8 of the
Petition for Writ of Certiorari]

SUPREME COURT OF THE
STATE OF GEORGIA

(Title Omitted in Printing)

ORDER (Entered July 15, 1976)⁶

[Printed in its entirety on page A-9 of the
Petition for Writ of Certiorari]

⁴ Denying Motion for Rehearing.

⁵ Denying Writ of Certiorari.

⁶ Denying Motion for Reconsideration.